

Pedagogy, Progress, and Portfolios

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From their inception, Alternative Dispute Resolution (ADR) courses required new pedagogies. Law students do not learn to negotiate, mediate, or arbitrate by responding to Socratic questions in the classroom, so ADR professors joined other innovative faculty at the forefront of legal education reform. For many years these efforts struggled against the academic mainstream.

Two recent reports, however, have awakened interest in innovative ways to educate lawyers. In 2007, the Carnegie Foundation for the Advancement of Teaching published a comprehensive study of legal education.¹ Drawing upon learning theory, an intensive study of sixteen law schools, and empirical data gathered from other schools, the interdisciplinary Carnegie team recommended that law schools expand training in both expert skills and professional identity.² At the same time, the Clinical Legal Education Association published a guide to *Best Practices for Legal Education*.³ This report, spearheaded by Roy Stuckey, offers detailed information about how law schools can achieve a wide variety of pedagogic goals.⁴ Like the Carnegie study, the *Best Practices* report focuses on enhancing professional and skills training for law students.⁵

These two studies have stimulated considerable response from the legal academy. A group of ten law schools, including some of the nation's leading institutions, formed a network to support further innovation in legal education.⁶ Other law schools have adopted systemic reforms aimed at

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¹ WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

² *Id.* at 1–17.

³ ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007).

⁴ *See id.* at 1.

⁵ *Id.* at 3–4.

⁶ *See* Legal Education Analysis and Reform Network (LEARN), General Description of Planned Projects 2009–2010 (2009), *available at* http://www.law.stanford.edu/display/images/dynamic/events_media/LEARN_030509_lr.pdf. The law schools participating in LEARN are CUNY, Georgetown, Harvard, Indiana (Bloomington), NYU, Southwestern, Stanford, Dayton, New Mexico, and Vanderbilt. *Id.* at 5.

enhancing their skills training and experiential education.⁷ In addition, numerous conferences, committees, and task forces are exploring new approaches to legal education.⁸

These developments offer significant opportunities for ADR faculty to expand the teaching of alternative dispute resolution. The “new” pedagogies that have aroused interest draw from ADR experiences and can support further development of the ADR curriculum. Most important, these pedagogies may integrate ADR more firmly as a central experience of legal education.

This article discusses one new pedagogy that embodies these promises: Professional Learning Portfolios. The first part of the article briefly outlines the portfolio concept. A second section explores how law schools might structure portfolios for their students, and a third considers how those portfolios might improve legal education. Finally, the article examines the ways in which portfolios could enhance teaching of alternative dispute resolution in law schools.

⁷ Washington and Lee, for example, is modifying its third-year curriculum to enroll students exclusively in clinics or simulations. Washington and Lee New Third Year Curriculum Home Page, <http://law.wlu.edu/thirdyear/> (last visited Aug. 7, 2009). Newly established Elon Law School offers extensive feedback on first-year exams, substitutes practice exercises for some exams, and requires each third-year student to design and complete a capstone leadership project. Elon School of Law – Academic Program Home Page, <http://www.elon.edu/e-web/law/academics/characteristics.xhtml> (last visited Aug. 7, 2009). The UC Irvine School of Law, which welcomed its first class in the fall of 2009, promises an entirely new approach to legal training, based largely on experiential education. UC Irvine School of Law Home Page, http://www.law.uci.edu/our_difference.html (last visited Aug. 7, 2009).

⁸ The Institute for Law Teaching and Learning, cosponsored by the law schools at Gonzaga and Washburn Universities, has hosted several conferences exploring law school pedagogy. The most recent, held in June 2009, examined teaching students professionalism and legal skills. *See* INSTITUTE FOR LAW TEACHING AND LEARNING, *Implementing Best Practices and Educating Lawyers: Teaching Skills and Professionalism Across the Curriculum*, <http://lawteaching.org/conferences/2009/> (last visited Aug. 7, 2009); *see also* UNIVERSITY OF WASHINGTON SCHOOL OF LAW, *Legal Education at the Crossroads – Ideas and Accomplishments: Sharing New Ideas for an Integrated Curriculum*, http://www.law.washington.edu/News/Articles/schedule_Crossroads.pdf (last visited Aug. 7, 2009); GEORGIA STATE UNIVERSITY LAW SCHOOL, *International Conference on the Future of Legal Education*, <http://law.gsu.edu/FutureOfLegalEducationConference/> (last visited Aug. 7, 2009).

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I. WHAT ARE PORTFOLIOS?

Professional learning portfolios allow students to map, document, and display their achievements. A good portfolio begins with learning objectives: what information and skills does a student need to master in order to perform as a professional in a particular field? After identifying these learning objectives, students pursue experiences designed to obtain the desired mastery. By documenting these experiences in the portfolio, students both track their progress and identify new learning goals. Finally, students may use the portfolio to display their achievements to employers; a portfolio may include course grades, detailed instructor evaluations, journal entries for clinical work, summaries of extracurricular experiences, writing samples, videotapes of simulated or real practice experiences, and any other information summarizing a student's learning achievements.

Portfolios thus are more than a means of collecting information; they are part of the learning process. Cognitive scientists recognize that the best education occurs when students embrace specific learning goals, identify concrete steps for achieving those goals, and receive regular feedback on performance.⁹ By advancing at least two of these goals, portfolios contribute directly to student learning.

Because of their educational potential, educators have adopted portfolios in a wide range of fields. Outstanding primary and secondary schools often rely upon portfolios for at least part of their curriculum. An increasing number of colleges are integrating portfolios into student learning.¹⁰ In professional fields, architects and artists have long used portfolios to organize and display their work. More recently, engineering schools have enthusiastically embraced portfolios as a way to integrate the classroom and professional facets of their training.¹¹

⁹ Many cognitive scientists label this process "deliberate practice." GEOFF COLVIN, *TALENT IS OVERRATED: WHAT REALLY SEPARATES WORLD-CLASS PERFORMERS FROM EVERYBODY ELSE* 65–83 (2008).

¹⁰ For sources documenting this trend and offering examples of portfolio use in specific courses, see JOHN ZUBIZARRETA, *THE LEARNING PORTFOLIO: REFLECTIVE PRACTICE FOR IMPROVING STUDENT LEARNING* (2004); *ELECTRONIC PORTFOLIOS: EMERGING PRACTICES IN STUDENT, FACULTY, AND INSTITUTIONAL LEARNING* (Barbara Cambridge ed., 2001). More sample portfolios for undergraduates appear among the projects collected by Opened Practices, a self-described "community for teaching and learning with open and community source tools." See Opened Practices Welcome Page, <http://openedpractices.org/practices> (last visited Aug. 7, 2009).

¹¹ See, e.g., E. Heinrich, M. Bhattacharya & R. Rayudu, *Preparation for Lifelong Learning Using ePortfolios*, 32 *EUR. J. ENGINEERING EDUC.* 653 (2007) (describing

In law schools, professors sometimes require students to create mini-portfolios as part of an individual course. A clinic, for example, might require students to collect documents and memos written during the semester; to compose journal entries describing client contacts; and to assess their own work critically. ADR courses, similarly, sometimes require students to create videotapes of simulated exercises, to reflect on those exercises, and to identify areas of improvement or new learning. These approaches generate portfolio-like products within a single course or clinic.

A few law schools have experimented with more comprehensive portfolios. The Thomas M. Cooley Law School tested a curriculum-wide portfolio in 2005, and has refined the system annually since then.¹² Students choose whether to use Cooley's portfolios, but have found them helpful for both curricular planning and job placement. Other schools, like Northwestern, have identified "core competencies" for students to achieve before graduation.¹³ As the school identifies avenues for students to achieve these competencies, a portfolio approach may emerge for tracking those successes.

Some law firms and bar associations, finally, have adopted portfolios to support the training of new lawyers. The law firm of Blackwell Sanders Peper Martin has identified area-specific competencies for associates to master.¹⁴ Associates pursue these competencies through a mixture of client work, mentoring, in-house training, self-directed activities, and continuing legal education. Detailed checklists help associates target learning goals,

benefits of portfolios for engineering students); Matthew I. Campbell & Christene Moore, *Web-Based Engineering Portfolio System* (Proceedings of the 2003 American Society for Engineering Education Annual Conference & Exposition 2003), available at <http://www.me.utexas.edu/proceed/docs/2003.06.Campbell.Portfolio.pdf>.

¹² See Heather Spielmaker & Amy Timmer, *The Professionalism Portfolio*, in REFLECTIONS OF A LAWYER'S SOUL 291 (Amy Timmer & Nelson Miller eds., 2008) (describing Cooley's development and implementation of portfolios).

¹³ David Van Zandt & Michelle Green, *Stress Core Competencies in Legal Education*, NAT'L L.J., July 7, 2008, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202422732240&slreturn=1&hbxlogin=1>. Northwestern's core competencies are (a) improved communication skills, (b) teamwork, (c) quantitative abilities, (d) strategic understanding and decision-making, (e) project management and leadership, and (f) globalization capabilities. *Id.*

¹⁴ See PETER B. SLOAN, FROM CLASSES TO COMPETENCIES, LOCKSTEP TO LEVELS (2008) (firm has since changed their name to Husch Blackwell Sanders) (handbook by one of the firm's partners, outlining competencies for each practice area).

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achieve those goals, and document their success. The competencies and checklists together produce a professional learning portfolio.¹⁵

Similarly, the Ohio State Bar Association has developed a mentoring program for newly admitted lawyers that relies upon some principles of portfolio learning. The bar association has identified a series of learning goals for new lawyers, together with suggested activities for reaching each goal.¹⁶ Each new lawyer meets with a mentor and selects activities suitable for mastering each goal.¹⁷ The newly admitted lawyers and mentors then pursue those activities.¹⁸ The program does not require participants to record their activities in portfolio form, but it uses the portfolio concept to organize the mentoring experience and facilitate development of professional skills.

II. WHAT WOULD A LAW SCHOOL PORTFOLIO LOOK LIKE?

Portfolios are both a concept and a tangible object. The portfolio concept embodies a goal-centered, student-motivated approach to education. This approach can assume many tangible forms. Some portfolios are electronic; some appear in old-fashioned notebooks or paper folders. Some portfolios contain brief lists of achievements; others encompass hundreds of pages of work. Law schools and their students can adapt portfolios to their individual learning styles. In this section, I try to assist that effort by sketching the outlines of a generic legal education portfolio.

Most educational portfolios include three components: educational goals, steps for achieving those goals, and reflections of performance. I explore below how each of those categories might appear in a law school portfolio.

A. Educational Goals

Few educational institutions leave portfolio design completely to their students. To guide student effort, institutions usually create a template that

¹⁵ In addition to serving this educational goal, the firm uses the competencies to evaluate associates and adjust their compensation. *Id.* As an increasing number of firms move away from lockstep compensation, professional portfolios may spread as a tool for tracking achievements among junior lawyers.

¹⁶ Supreme Court of Ohio, Lawyer to Lawyer Mentoring Program Web Page, <http://www.sconet.state.oh.us/mentoring/default.asp> (last visited Aug. 7, 2009).

¹⁷ The Supreme Court of Ohio Commission on Professionalism, Lawyer to Lawyer Mentoring Program: Implementation Plan 15–16 (Permanent Program), available at http://www.supremecourt.ohio.gov/AttySvcs/mentoring/PDF/implementation_plan.pdf.

¹⁸ *Id.* at 16–18.

expresses common learning goals. Students may then supplement those goals with more unique objectives.

A typical law school template might include general learning goals such as “mastering legal doctrine” or “developing legal writing skills.” Each category would include sub-goals. A “legal doctrine” category, for example, might list all of the doctrinal subjects that a school teaches, or all of the subject areas in which its graduates practice. Students could supplement those goals with more unusual objectives or sub-goals.

Similarly, a template goal of “developing legal writing skills” would identify a range of writing tasks that are essential to professional development. Arranged as goals and sub-goals, these tasks might appear like this:

Developing Legal Writing Skills

- Objective assessments for a colleague or client
 - Law firm memos
 - Client letters
- Persuasive writing
 - Trial court memos
 - Appellate briefs
 - Written advocacy to agencies or other decisionmakers
- Scholarly or policy-oriented writing
 - Seminar papers
 - Law journal notes
- Practice documents
 - Contracts, leases, or other agreements
 - Interrogatories or other discovery documents
 - Jury instructions or other trial documents
 - Wills and other planning documents

Students, again, could supplement these goals with objectives of their own. Some students, for example, might develop a particular interest in policy-oriented writing for nonprofit organizations; they could add that specific goal to their portfolios.

Portfolios are notable for their flexibility in identifying educational goals. Just as individual students may add goals to the template, each school may tailor its template to its institutional mission. One school, for example, might perceive “developing an understanding of international legal systems” as a critical goal for all students to achieve. Another school might view that objective as secondary. Schools can borrow from one another in designing

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templates, but they can also use portfolio templates to express their distinctive professional visions.

In addition to articulating goals, law schools can use portfolio templates to designate those goals as required, highly recommended, or elective. All law schools mandate study of some doctrinal subjects; most also require students to complete particular types of writing assignments. A portfolio can mark these objectives as required ones for each student. The legal institution can also recommend a set of educational experiences for all students, or for students interested in particular practice areas. A portfolio template enables law schools to offer course-planning advice in a manner that students find more user-friendly than conventional curriculum guides.

Especially if a school uses electronic portfolios, the template can also allow students to prioritize educational goals and group sub-goals in different ways. One student, for example, might stress the goal of “mastering legal doctrine related to an environmental law practice” while another would favor “mastering legal doctrine needed to practice tax law.” Both of these students might designate completion of an administrative law course as a sub-goal supporting their overall objectives.

B. Steps for Achievement

Educational goals represent only the first layer of portfolio learning. Once students have targeted specific educational goals, portfolios require them to identify means of achieving those goals.

The law school’s template will assist students in finding these means. For goals related to acquisition of doctrinal knowledge, the template may point students to particular courses. The school template, however, can dig deeper than the typical course catalogue by referring students to components of courses. A course on “legislation,” for example, may include significant discussion of campaign finance law. A student interested in exploring that doctrinal field would be able to pinpoint the legislation course through a well designed portfolio template.

As discussed further below, portfolio templates can be particularly useful in helping students locate courses that offer exercises in negotiation, client counseling, document drafting, and other types of expertise that reach beyond basic doctrinal learning. Although law schools now offer stand-alone courses on these subjects, doctrinal courses sometimes incorporate these essential professional experiences as well. A comprehensive portfolio template would advise students that the educational goal of “participating in a law-related negotiation” could be realized in particular doctrinal courses as well as in a course titled “negotiation.”

The “means” portion of a law school portfolio would also encourage students to consider extracurricular activities and workplace tasks as ways to fulfill educational objectives. A student who wants to build negotiation skills by participating in a law-related negotiation may be able to achieve that goal through an extracurricular negotiation competition, an assignment at work, or a volunteer activity. By focusing on educational goals, portfolios help students envision alternative ways to achieve their professional aims.

At the same time, portfolios can distinguish different levels of experience. “Participating in a law-related negotiation” is not the same as “learning about effective negotiation techniques” or “receiving feedback on my own negotiation performance.” All of these experiences help develop expertise in negotiation; all may be necessary to achieve true mastery. But during the three short law school years, students will not be able to achieve every sub-goal related to every professional objective. By helping students distinguish different steps of learning, portfolios make different levels of professional attainment more transparent to students.

C. Reflections on Performance

After formulating goals and identifying means to achieve them, portfolios allow students to reflect upon their performance. These reflections include both internal and external components.

In the internal portfolio, students record their own reactions to an educational experience. A student may feel that an experience was a waste of time, or at least unproductive for the student’s educational goals. Or, a student may conclude that an experience was well designed, but that the student’s own performance fell short. In some cases, a student may celebrate mastery of a subject or professional skill. However positive or negative a student’s experience, the internal portfolio allows the student to reflect that work.

These reflections help students identify new educational goals and means of attaining them. Professional mastery never ends: even champion chess players and golfers seek improvement. A law student who has completed a course, summer clerkship, or volunteer activity can record the highs and lows of the experience, as well as the new goals generated by the activity.

To encourage candor in these reflections, the internal portion of a portfolio should be private—accessible only to the student. The student can choose to share those reflections with faculty counselors, workplace mentors, and others when the student would find that helpful. Law schools, in fact, can achieve the most benefit from portfolios by providing faculty mentors who will review results with students. Given the hypercompetitive atmosphere of

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law school, however, students need a private place to reflect on both successes and failures. By candidly recognizing gaps in their achievement, students can attempt to fill those needs.

The external portion of a portfolio is a marketing tool. In this section, a student can conveniently gather materials to show employers. This information might include a traditional transcript and resume, but it can encompass much more. Students may deposit writing samples, videotapes, and other work products in their portfolios. With an employer's permission, the student can include sample work assignments.

Students can also write their own summaries of distinctive educational experiences. A student interested in disability law, for example, might have helped conduct an accessibility study for a nonprofit organization. The study might not have yielded a tangible document for the student to share, but the student could create a succinct summary of the experience. Professors and workplace supervisors can complement these portions of the external portfolio by offering evaluations of a student's work on a particular project.

Especially when created electronically, the external portion of a portfolio can give employers remarkable information about a student's performance. With the click of a button, the employer can scan a contract drafted by the student or view the student's closing argument in a trial practice course. Students can also adapt these portfolios for different employers, highlighting one type of work for some employers and different achievements for others.

III. HOW COULD PORTFOLIOS IMPROVE LEGAL EDUCATION?

The portfolios outlined in the last section could help law schools achieve at least five distinctive goals. First, portfolios could improve student learning by identifying the professional objectives that motivate law school classes. Second, these tools would help students integrate extracurricular activities and work experiences with their curricular tasks. Third, portfolios could encourage law schools to teach a greater range of professional skills, as recommended by the Carnegie Foundation and other contemporary critics of legal education. Fourth, portfolios would allow students to present their professional preparation more effectively to employers. Finally, portfolios create a model for lifelong professional development that students can maintain in practice. I discuss each of these goals briefly below.

A. What is the Point of Law School?

Most first-year students find law school confusing. Some of that confusion is unavoidable: reading cases, developing analytic skills, and

learning to think like a lawyer are all hard work. But some confusion stems from the fact that law schools rarely articulate the methodology that underlies their curriculum. Why, exactly, do students study Contracts, Torts, Property, and other classic subjects during the first year? Why do they devote so much time to reading and synthesizing cases? How does the holding in *International Shoe v. Washington*¹⁹ affect daily law practice?

During the second and third years, many students adopt a cynical attitude toward law school courses. After a taste of “real law” in a summer clerkship, students assume that law school classes really are as irrelevant as they appeared during the first year. Continued attendance in law school is merely a rite of passage or, for some subjects, a good foundation for taking the bar exam.

Law schools have spent more than a century developing their legal curriculum; we should be able to explain its purpose to students. A good portfolio template would reveal the professional goals that first-year courses aim to achieve. Even though most of those courses are required, students could note their achievement of particular objectives. One purpose of first-year courses, for example, is to teach students basic legal principles like intent, negligence, offer, acceptance, ownership, and causation. Portfolios could list those objectives explicitly, allowing students to note their mastery of basic principles across different parts of the curriculum. Listing objectives like these would help students perceive the pedagogic goals of the first year, and would enhance their learning.

The first-year curriculum also introduces students to the fundamental facets of legal thinking: researching law, analyzing cases, interpreting statutes, synthesizing authority, summarizing facts, articulating competing arguments, and recognizing rationales. Portfolios could note these goals, reminding students that they will use these skills frequently in law practice. Again, students would be able to record their work on each of these areas in different first-year courses.

Finally, the first-year curriculum teaches students how to create basic legal products: analytic memos, persuasive briefs, and oral arguments. An increasing number of schools introduce first-year students to other professional tasks, including negotiation, client counseling, interviewing, and fact gathering. Portfolios can enumerate these professional goals as well, helping students document their achievements in each area.

Portfolios can play a similar role in the upper level, articulating the many goals of a diverse curriculum. Why does the school require second- and third-year students to take evidence or business associations? What

¹⁹ *International Shoe v. Washington*, 326 U.S. 310 (1945).

professional goals does a seminar or writing requirement advance? What objectives can students pursue through their elective courses? By describing these goals as part of a portfolio template, law schools would help students better achieve them.

Effective education is purposeful: when students understand the goals they are trying to achieve, they master material more readily. Law schools could greatly enhance the value of the education they already offer simply by helping students see the purposes behind that education. The *Best Practices* report stresses this point, exhorting law schools to define their professional goals more clearly.²⁰ Portfolios offer a tangible opportunity for each school to articulate those goals: by defining the objectives that students may attempt to achieve across the curriculum, the faculty identify their own educational purpose.

B. Integrating Curricular and Extracurricular Work

Law schools today offer an extensive array of extracurricular activities. Law reviews and moot court competitions have multiplied; clubs and student organizations number in the dozens; opportunities to tutor students, provide pro bono legal aid, and engage in other activities abound. Students, moreover, pursue an increasing number of part-time jobs, summer clerkships, and professional internships.

Some faculty members perceive these activities as distractions from academic work; others welcome the experiences as classroom complements. Schools, however, rarely explore the specific ways in which these extracurricular experiences further students' professional development. What educational goals should a student expect to realize from moot court participation? Does leading a student organization prepare students for any work in law practice? How do summer clerkships build upon academic work and, in turn, inform that work in subsequent years?

Portfolios could help both students and law schools trace these connections. A student who wants to build expertise in environmental law, for example, could note contributions from coursework, workplace opportunities, membership in a student organization, and participation in a specialized moot court competition or law review. Similarly, students could pursue achievement of law-related skills through multiple avenues. A student who aims to improve his negotiating skills might record completion of a course on negotiation, resolution of a dispute between two factions of a

²⁰ STUCKEY ET AL., *supra* note 3, at 40.

student group, and observation of a senior lawyer's negotiation on behalf of a client.

By focusing students on educational goals, rather than merely course requirements, portfolios could help students identify a wide range of experiences contributing to attainment of those goals. No law school curriculum can train students in every aspect of professional behavior; schools and students increasingly rely upon extracurricular activities to complement the formal curriculum. Portfolios offer one avenue for harnessing those experiences and linking them more surely to a student's education.

C. Professional Skills

Practitioners repeatedly call for law schools to offer more training in the practical skills that lawyers employ. Although law schools have vastly expanded this instruction during the last two decades, reviews like the Carnegie report suggest that the academy still falls short.²¹ Why do schools not simply add more skills training to the curriculum? In particular, why cannot law schools integrate more practical skills into the courses they already teach?

There are many answers to those questions, including the fact that some employers disagree with calls for more skills-oriented education. But one stumbling block lies in the basic structure of academic institutions: law schools, like most other academic programs, organize learning into discrete courses taught by individual faculty members. To teach client counseling, therefore, we need a course on "client counseling" taught by a faculty member who specializes in that field. Students sometimes suffer from the same syndrome; they forget that they drafted a contract in their first-year contracts class, assuming that they can learn that skill only in a course labeled "contract drafting." Since neither law school budgets nor student schedules can accommodate separate courses on all of the skills needed for law practice, we continuously fall short.

Once again, portfolios provide a partial answer by shifting attention away from course packages and toward educational goals. If a portfolio template lists "contract drafting" as a goal, and asks the student whether she has had any opportunities to draft contracts, the student may remember the first-year classroom exercise. She may also recall the form contracts she modified at work, the purchase order she revised for a student organization, and the poorly drafted contract that formed the basis of a moot court

²¹ See, e.g., SULLIVAN ET AL., *supra* note 1, at 191–92.

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exercise. These combined experiences, drawn together by a portfolio goal, may provide as many insights into contract drafting as a separate course on the topic would.

Portfolios, meanwhile, offer a subtle incentive for faculty members to include more professional practice experiences in their courses. Law professors, like their students, enjoy recognition. If portfolios list diverse practice experiences such as counseling clients and drafting wills as educational goals, and if students seek to fill those goals, then professors may step forward to satisfy the demand. Appearing as an entry in several dozen student portfolios may seem like scant reward, but professors enjoy recognition for the learning they share in the classroom. Reminding professors of new educational benefits they could offer will tempt some to experiment in established courses.

On an institutional scale, portfolios can also push schools toward educating students in a broader range of skills. If students repeatedly name a particular goal, such as learning to interview witnesses, in their portfolios, schools will note the rising interest. Institutions respond more readily to specific demands like, “teach me how to interview witnesses” than to nebulous requests like, “we need more skills training.” If employers reinforce the demand by hiring students who have achieved a specific skill, institutions will have an added incentive to satisfy the interest.

D. Employment

The legal job market is tough. Even after the current recession lifts, lawyers face stiff competition from other professionals, paralegals, and outsourcing lawyers in foreign countries. Corporations and other deep-pocket clients are pressing for lower bills. And some lawyering tasks have been greatly reduced by computers and do-it-yourself forms.

To survive in this market, new lawyers need to prove their immediate workplace worth. A portfolio that summarizes the student’s achievements and allows the employer to view specific examples of memos, negotiations, and court documents may land a desirable job. Portfolios, moreover, can focus students on the specific skills they have mastered, allowing them to market themselves more confidently to employers. Rather than telling an interviewer, “My favorite class this semester is evidence,” a student can explain:

“I’ve been building my knowledge of legal doctrine by taking core courses in evidence and business associations. At the same time, I continue to build my professional skills. In the evidence class, I drafted a new model rule on

character evidence, and in business associations I had the chance to negotiate a set of by-laws with an opponent.”

The career-placement function of portfolios also has potential to alter the law school curriculum. When employers today bemoan the poor skills training of law students, professors often want to ask: “If I send you a student who ranks in the middle of the class but has earned a top grade in two clinical courses, will you hire that student over one ranked in the top ten percent?” Professors who dare ask this question often receive a guilty grin from the practitioner.

As long as employers center hiring on law school grades and law review membership, schools lack a key incentive to offer more skills training. Skills courses are expensive, and they do not yield as much as they should in the employment market. But detailed portfolios may give employers the courage to hire students who can tangibly demonstrate their mastery of desired skills. If that happens—if employers begin hiring students who excel at writing memos, cross-examining witnesses, or any other skill—law schools will offer more opportunities for students to develop those abilities. In the current job market, no law school wants its graduates left behind.

E. Lifelong Education

Law schools cannot produce fully formed lawyers in three short years. Cognitive scientists, in fact, estimate that expertise in *any* professional field requires about ten years to acquire.²² Legal expertise, moreover, is not static: law practice changes rapidly. Law school graduates, therefore, must devote several post-graduate years to honing their expertise, and then must expect to spend a lifetime updating that mastery.

Although legal expertise demands continuous practice, legal employers admit that their ability to mentor junior lawyers has declined. With clients pressing for quicker service at lower cost, few employers can afford to give new lawyers extensive formal training. Meanwhile, even opportunities for informal learning have declined. The senior lawyers who used to share their insights with junior colleagues while waiting in airports or courthouse lobbies are now busy on their cell phones and Blackberries.

These changes mean that lawyers must create their own continuing education. Lawyers of all seniority levels must identify the skills they want to refine, recognize opportunities for developing those skills, and aggressively

²² COLVIN, *supra* note 9, at 152–53. *See generally id.* at 61–62.

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pursue those opportunities. This type of self-initiated learning can produce remarkable results. Benjamin Franklin, for example, honed his lucid writing style through a rigorous program of self-education.²³ Few continuing education programs could duplicate the quality of Franklin's self-imposed training.

Law school portfolios can introduce students to the concept of controlling their own educational ends and means. A student who wants to learn about real estate deals during law school, for example, might seek experiences from professors, employers, or professional acquaintances. Even if the school offers no suitable clinic or simulation, the student might find a practicing lawyer who would allow her to observe a real estate closing. After graduation, this new lawyer could seek increasingly sophisticated training in real estate law. In addition to seeking employment in that field, she might volunteer for assignments on particularly complex matters, work pro bono to explore related issues, and otherwise chart her own course of advanced training.

Successful self-education rests on two building blocks: identifying specific goals and recognizing concrete steps toward achieving those goals. A law student who knows only that he wants to "learn something about trusts and estates" will have to rely upon a course or mentor to illuminate aspects of that field. A student who says, "I want to understand the process of probating an uncontested will," can then identify steps for exploring that field: the student might read courthouse instructions on uncontested wills, talk to a practitioner in the field, or enroll in a probate clinic. After mastering that first educational goal, the student can pursue more sophisticated objectives such as drafting a will, considering the tax implications of common bequests, and counseling clients who wish to avoid estate disputes.

Portfolios accustom students to defining educational goals and mapping strategies for achieving them. A student who has practiced setting and achieving educational goals during law school, rather than simply enrolling in a series of unconnected courses, is more likely to mentor herself effectively during a lifetime of law practice. Like Benjamin Franklin, our graduates can train themselves to be masters.

²³ *Id.* at 105–08. Working with a volume of professional essays that he admired, Franklin devised a series of ingenious tasks for improving his own work. To enhance his vocabulary, for example, Franklin forced himself to rewrite the essays in verse. *Id.* at 106. To refine his organizational abilities, Franklin reduced each essay to a pile of paper slips expressing the ideas of individual sentences. *Id.* He shuffled the piles and set them aside for a while, returning later to reconstruct the essays in logical order. *Id.*

IV. IMPLICATIONS FOR ALTERNATIVE DISPUTE RESOLUTION

Portfolios can enhance legal education for all students, but these tools offer particular promise for professors, law schools, and practitioners interested in promoting the study of alternative dispute resolution. Portfolios can expand the teaching of ADR topics in at least four ways.

First, portfolios trump the longstanding dispute about whether law schools should teach alternative dispute resolution concepts in freestanding courses or should integrate those principles across the curriculum. The best answer, of course, is both: students benefit from studying alternative dispute resolution in multiple contexts as well as in dedicated courses. Portfolios implement this approach by allowing students to pursue ADR education flexibly, in components of doctrinal courses as well as in freestanding classes.

Second, portfolios mute arguments about whether alternative dispute resolution encompasses doctrine, professional skills, or essential elements of thinking like a lawyer. Again, the answer is “all of the above”—ADR spans all three of these categories. Legal doctrine governing alternative dispute resolution fills weighty casebooks and treatises. Students in these courses learn specific negotiation, mediation, counseling, and arbitration skills. And few practicing lawyers doubt that these intellectual skills are essential to “thinking like a lawyer.”

But portfolios allow us to skip debates over ADR’s exact place in the curriculum. Most students will identify both ADR doctrine and skills as key educational goals. As students focus on these goals, they will seek opportunities to fill them. Faculty will feel more pressure to satisfy students’ concrete demands, rather than to engage in theoretical debates about the place of ADR in the curriculum.

Third, portfolio-thinking can lessen the costs of providing ADR education in law school. Once students and faculty concentrate on educational goals, rather than on courses, they may fashion innovative ways to educate students about ADR. One-credit mini-courses, weekend workshops, and specialized externships may allow students to achieve some of their educational goals in this field. Offering these experiences often illustrates the depth of student demand for ADR education: when eighty students clamor to enroll in a winter-break workshop on mediation, it is hard for deans to ignore the educational value of the experience.

At the same time, portfolios make it easier for faculty members to add ADR components to their existing courses, reducing the pressure for expensive stand-alone classes. Under our conventional approach to education, a professor who adds a negotiation exercise to a securities

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regulation course risks student censure. “We wasted a week on negotiation,” the students may protest, “when we really needed to know the securities stuff for our summer jobs. And the negotiation material was not on the exam anyway.” This type of complaint, well known to most professors, views educational goals solely as successful completion of courses in designated subject areas. Classroom experiences that do not fit the course title, and that are not on the exam, are worthless.

Portfolios, however, redefine educational goals to include a wider range of experiences offered in the classroom. With portfolio-based learning, professors can advertise all of the educational goals that their courses aim to fulfill. Some students will affirmatively choose a course that complements doctrinal learning with a negotiation exercise; others will at least understand the course’s dual goals. Recording those diverse goals in their portfolios will help all students understand that they have learned something about *both* a doctrinal subject and a critical lawyering skill.

By offering professors low-risk opportunities to respond to student demands for ADR, portfolios help spread ADR learning throughout the curriculum. This reduces the costs of ADR education by engaging more faculty members in the work. Equally important, the process lowers the perceived opportunity cost of ADR classes by demonstrating to faculty the value of ADR education. As more faculty experiment with ADR exercises, they understand the important work lawyers perform in that field.

Finally, portfolios can expand ADR education by leveraging the contributions of employers and other practitioners. As students identify ADR learning objectives, they will fulfill some of those goals outside the classroom. Experiences gained at work, through volunteer activities, and in externships will help students explore negotiation, mediation, and other processes. Reflecting on those experiences through portfolios reinforces the learning and ties it to the students’ more formal curriculum. ADR offerings increase dramatically once students incorporate this extracurricular learning.

Employers, externship supervisors, and other practitioners, moreover, will become aware of the portfolios compiled by students. These professionals are likely to reinforce student interest in alternative dispute resolution. As senior lawyers describe the importance of ADR in their own practices, or ask students about ADR work during job interviews, students will attribute even more value to these experiences. A positive cycle will influence schools to incorporate still more ADR in the curriculum. Eventually, the practitioners may even say, “Yes, I would hire the student with demonstrated negotiation skills over one whose grades rank her higher in the class.”

V. CONCLUSION

Professors of alternative dispute resolution have achieved many milestones. They have created new fields of learning, developed pedagogies for those areas, and fought to include ADR in the law school curriculum. Today, those achievements are bearing fresh fruit: professors across the law school curriculum are expressing interest in new approaches to legal education. This pedagogic renaissance offers ADR students and faculty a singular opportunity to further expand ADR education.

Professional learning portfolios are one promising tool for capitalizing on this trend. Portfolios draw upon pedagogies that ADR professors themselves pioneered. They also address many of the concerns raised by education reformers, offering an opportunity to improve several facets of legal education. At the same time, as this article has argued, portfolios offer special advantages for enriching students' exposure to alternative dispute resolution. For both ADR professors and other education reformers, professional learning portfolios offer a promising addition to the law school curriculum.